

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

UNITED STATES OF AMERICA : **CRIMINAL NO. 4:12-CR-0011**
:
v. : **(Judge Conner)**
:
RICKY JEROME SMITH :

ORDER

AND NOW, this 27th day of June, 2012, upon consideration of the motion to dismiss for vindictive prosecution (Doc. 47), filed on March 26, 2012, by *pro se* defendant Ricky Jerome Smith (“Smith”), wherein Smith alleges a conspiracy to indict and convict him due to his filing of civil lawsuits, criminal complaints and grievances against prison staff (see Doc. 48, at 3), and wherein Smith alleges numerous acts of retaliation by said prison staff (id. at 5), and it appearing that the Due Process Clause prohibits a prosecutor from using criminal charges to penalize a defendant’s valid exercise of his constitutional or statutory rights, see Blackledge v. Perry, 417 U.S. 21 (1974); United States v. Esposito, 968 F.2d 300, 303 (3d Cir. 1992), and to prevail on a claim of vindictive prosecution a defendant must establish actual vindictiveness or facts sufficient to give rise to a presumption of vindictiveness, see Esposito, 968 F.3d at 303, and the presumption arises “only where there exists a realistic likelihood of vindictiveness,” United States v. Paramo, 998 F.2d 1212, 1220 (3d Cir. 1993) (internal citations and quotations omitted), but such presumption may be overcome by the government’s proffer of legitimate, objective reasons for its conduct, id., and the court finding that Smith has put forth no more than bald allegations that prison staff and the prosecution are in a

conspiracy to convict him due to his behavior while incarcerated, and that there is no evidence of vindictiveness by the prosecution in the above-captioned matter, and the court concluding that Smith has neither established actual vindictiveness, nor put forth any evidence to give rise to a presumption of vindictiveness, it is hereby ORDERED that the motion to dismiss for vindictive prosecution (Doc. 47) is DENIED.

S/ Christopher C. Conner
CHRISTOPHER C. CONNER
United States District Judge